

19.1	LAND LAW (immovable property law, Cyprus land registry, private ownership, restrictions, acquisitive prescription, trusts registration, etc)
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Background

The underlying principle of Cypriot Land Law is that every interest or right over or affecting immovable property is registered and can be traced in the Registries of the Lands and Surveys Department kept in the District Land Offices (one for each of the five Districts). These include ownership, easements, privileges rights of way, rights reserved, mortgages and encumbrances, contracts of sale, springs, boreholds wells, watercourses irrigation channels and rights thereon, trusts and leaseholds.

This was made possible by the General Survey and Registration conducted in the 1920s. The General Survey resulted in the adoption of survey plans made to scale for the whole of Cyprus on which each piece of land as it was held then is plotted to scale and numbered. Practically all privately owned land was then registered in the name of the owners and title deeds issued. Each registration and title deed relates to a plot on a Government survey plan made to scale and the area covered by the registration and corresponding title deed is the area of the plot on such survey plan.

Forest land and government land (known as chali land) public roads and footpaths lakes, rivers, streams and natural watercourses are clearly plotted on such plans and indeed forest land is on the ground clearly marked by distinctive land marks ("Koukos") on its boundaries. No rights can be acquired over such land otherwise than by a decision of the Council of Ministers.

The only rights which do not appear on the Land Registries are beneficial interests in trusts imposed by law eg. constructive and resulting trusts, contracts of sale not

deposited with the Land Registry, and easements and rights of way acquired by long use (i.e. over 30 years) which have not yet been registered. All if disputed have to be determined by a Court. However the title or rights of a bona fide purchaser for value without notice cannot be defeated by trust imposed by law and contracts of sale not deposited with a District Land's Office.

The general survey and registration and the compilation of a Land Registries since the 1920s means that the history of each registration and of its related plot (i.e. previous owners the way they acquired ownership the original plot and subsequent divisions or additions) is readily available. Thus mistakes related to wrong registration or wrong plotting (which are scarce situations) can be traced and corrected. Further the various rights acquired or abandoned are traceable and the survey plans enable the demarcation of boundaries with precision.

Since the enactment in 1946 of the Immovable Property (Tenure Registration and Valuation) Law CAP 224 no title to immovable property can be acquired by any person by adverse possession against the Government or a registered owner.

Thus a holder of a valid title deed issued by a District Land's Office is to all intends and purposes protected against adverse possession or any other claims. The title deed is a two page document which certifies that the named holder is the registered owner of the plot number of the Sheet Plan of the location referred there in. The area of the plot the date of registration and the easements or rights of way or other permanent rights in favour of or over the plot are also included. Other temporary rights such as mortgages and encumbrances can only be discovered by a search in the Land Registry.

Forms of Ownership

CAP 224 of the Laws as amended which is still the basic law regulating the rights over immovable property provides for and recognizes the following forms of ownership.

Full title

The full title to immovable property means that the registered owner is entitled to the whole interest in the plot of land and can do whatever he likes with his property subject to any town and country planning restrictions.

Beneficial Ownership

Beneficial Ownership confers on the owner those rights which are provided in the trust deed which is deposited with the Land Registry. He has no title as the registration and the title deed is issued to the trustee who is the legal owner. The title deed expressly states that the property is held on trust.

Another form of beneficial ownership is the life interest reservation. This confers on the beneficial owner the right to possess or exploit the tenement for the period of his life while the title is in the name of another. This is usually a course adopted by parents when transferring their land to their children.

Leasehold

Leasehold Ownership confers on the Leasehold title deed holder those rights which are provided in the lease which is deposited with the Land Registry. Such leasehold title deeds can be issued for long leases i.e. 15 years or over and subject to the provisions of the lease, can be sold, transferred, or mortgaged at the holders option.

Undivided shares

Ownership in undivided shares is a singular form of ownership. The owner is registered in e.g. 1/3 undivided shares of the plot of land or building covered by the registration. Such ownership is invariably the result of inheritance where the heirs instead of selling the property and sharing the purchase price or alternatively distributing the property they register the property in their names in undivided shares in proportion to their hereditary right e.g. three children of a deceased

register a plot in their names in 1/3 undivided share each. Each undivided shareholder has a right to possession together with the others to the whole of the property without a specific part of the property being allocated to him. They can together lease or sell the property. Each one has the right to transfer by donation or inheritance his share and further has the right to mortgage or otherwise encumber his undivided share. Each undivided shareholder is entitled to sell his undivided shares subject to the other undivided share holders option to purchase his shares at the price achieved. Finally each undivided shareholder is subject to the powers of the Director of Lands and Survey's Department (the Director) to compulsorily divide or sell (if it cannot be divided) the plot on the application of one of the other undivided shareholders.

Division of immovable property

Large plots of land can be divided in smaller plots by the Director on the application of the registered owner or compulsorily on the application of an undivided shareholder.

Such smaller plots may have an area of approximately 7200m² or 2880m² or 1440m² depending on whether they are irrigated or there are vineyards or trees on such land. However no land, which is included in a building zone in the town and country plan, can be divided into smaller plots without a division permit from the appropriate authority. Such permit includes the approved plans of the smaller building plots and conditions for the construction of roads and availability of water supply and electricity.

Where there are buildings they are either included in the registration of the plot of land or there can be a division of such buildings and a separate registration and title deed be issued of the various tenements. Such division may be:

(a) **Horizontal (applicable mainly to apartment buildings)**

It applies when there is ownership of a separate parts of a multi storey building (e.g. a floor or parts of a floor – apartment). Division and separate registration of the tenements can only be achieved with the permission of the planning appropriate authorities and in accordance with the approved building plans. In such a case, each registration conveys in addition to the apartment a percentage in undivided shares in the plot of land and the common use areas.

(b) **Vertical (applicable to semidetached or detached houses).**

It divides the different ownerships /properties on separate buildings (or parts of these buildings) that were constructed on a single plot of land. Usually the plot is divided and the registered owner has a full title to the building and land included in his title.

Acquiring Property

Property may be acquired:

- (a) By straight transfer by the registered owner. Such transfer may be by gift or sale or exchange with other property and is achieved by the signing of a transfer form before a District Land Office.
- (b) By inheritance on the application of the Administrator of the estate of a deceased person.
- (c) Pursuant to the provisions of an express trust.
- (d) By division or distribution.
- (e) By a Court Order which is issued in the most common situation in cases of wrong registration, fraudulent transfers, breach of trust, and breach of Contract.

In each situation the Land Registry will transfer the registration to the new owner and issue a new title deed to him. Transfer fees of 5 + 8% depending on the value are payable for sales, donations to anyone other than parent, child, brother or sister or spouse.

Commonly Encountered Problems

The most common problems faced by owners are:

(a) **Access.**

As most plots of land have no access to a public road owners often need a formal right of way to access a public road. The Director has power on the application of an owner of a plot without access or without satisfactory access to designate a right of way through adjacent plots up to the nearest public road for use on foot with animals or vehicles. The width is usually 4 meters nowadays. The law provides that it should be the shortest way causing the least nuisance to the adjacent owners. Further the owners of the adjacent properties are compensated usually by the market value of the land affected. Although so compensated the land covered by the right of way remains their own the right being only a right of passing over it.

(b) **Borderline Disputes**

Often owners of adjacent plots claim that strips of land on their borderline is part of their plot. The Director is empowered to determine at first instance such disputes, on the application of either party, according to the survey plans whether the disputed strip is part wholly or in part of the one or the other plot.

(c) **Performance of Contract of Sale of Land**

Executory Contracts of Sale of Land may be deposited, as an encumbrance on the land, with the Land Registry Office of the District where the land is situated. This gives them priority over subsequent encumbrances and also over previous contracts of sale of the same property which were not deposited. Further it empowers the Court to order the Specific Performance of the Contract. In fact until recently the Court could not order specific performance of the contract unless the contract was deposited with the Land Registry. Recent enactments enable the court to order specific performance even if the contract is not deposited if the circumstances justify such an order but it is always advisable to deposit the contract within the time allowed as the priority of claims over the property is regulated by the date of registration of the encumbrance. The problems mostly arise when a contract of sale of an apartment or a house is signed while the construction is not complete or even before it commences and hence there is no separate title deed for the unit purchased. If the developer fails to comply with the conditions of the building permit or if he abandons works or if he had previously mortgaged the plot to secure finance for the building works and has failed to repay then the separate registration and title deeds for the unit sold cannot be issued and the purchaser could be exposed. Recent amendments to the legislation and the Specific Performance law enable the purchasers to take over the building and completion of works and apply for separate title deeds in certain situations, to pay the balance due on their contracts to the Mortgagee and force the exclusion of the unit they purchased from the mortgage and to force through the court Specific Performance of their contract. Further amnesty laws enable existing violations of building permits to be covered by amendments to the permit at a cost and therefore separate title deeds be issued.

These new developments of the law are expected to solve the problems faced by purchasers of buildings under construction. However the provisions are complicated and it is always advisable to involve a legal advisor at the

negotiation stage and obtain all the information available from the Land Registry.

(d) **Compulsory Sales**

Compulsory Sales of immovable property may take place in the following instances.

- (a) By a decision of the Director on the application of an owner of undivided shares when the property cannot be divided.
- (b) By a decision of the Director or a Court Order in satisfaction of a debt when the property is mortgaged.
- (c) By order of the Court in execution of a judgment against the registered owners to satisfy the judgment debt.

Sale is conducted by the Director by public auction pursuant to the Rules of Sale. Disputes often arise as to the timing of the sale, the reserved price or the procedure followed.

(e) **Hereditary Rights**

The appreciation in the value of land has led to a lot of expatriates who have for a long time even generations neglected their rights to inheritance to seek and claim their hereditary rights. The existence of the Land Registries and the availability of the history of each registration enable them to trace the properties of their ancestors. Usually the properties have been registered in the names of the rest of the heirs. In such situation the Director has no power and the only way to claim is through the Court.

In all the situations where the Director is empowered to decide he does so according to the Registries, Records, and Plans kept in the Land Registries. He has no power to

decide over conflicting claims of ownership or hear evidence. Further every Director's Decision is subject to an appeal to the District Court of the District where the land is situated and from the decision of the District Court to the Supreme Court.

Restriction on the rights to Immovable Property

Article 23 of the constitution of Cyprus safeguards every persons right to acquire own possess enjoy or dispose of any movable or immovable property.

No deprivation or restriction or limitation is allowed except for restriction or limitations which are absolutely necessary in the interest of public safety or public health or the public morals or the town and country planning or the development and utilization of any property to the promotion of the public benefit or the protection of the rights of others and only if imposed by law. Just compensation must be paid for any such restrictions or limitation which materially decrease the economic value of such property. Such compensation if not agreed is determined by the courts.

The restrictions and limitations imposed are those relating to Town and Country Planning and the imposition of various planning zones which restrict the use of the land (e.g. agricultural residential, industrial etc) or the buildings to be constructed e.g. area or height or both or the ability to build eg. by imposing a maximum length of access to a public road.

There is also a protection of the coast line beyond which no building is permitted.

Finally immovable property may be compulsorily acquired or requisitioned by the state or public authorities for public purposes provided by laws 15/1962 & 21/1962. Just compensation is payable in each situation which if not agreed is determined by the Courts.

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